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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/575,997

04/17/2006

Richard L. Schuster

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WOMBLE CARLYLE SANDRIDGE & RICE, PLLC

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EXAMINER

ELKINS, GARY E

ART UNIT

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/575,997	Applicant(s) SCHUSTER, RICHARD L.	
	Examiner Gary E. Elkins	Art Unit 3782	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 July 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 4,5,7-20,26-39 and 41-46 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 4,5,7-20,26-39 and 41-46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>20080717, 20080728</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. Claims 4, 5, 7-20, 36-39 and 41-46 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 4, lines 21, 24, 25, 28, 31, 33, 35, 36, 40, 42-44 and 48, "the first side end flap", "the second side end flap", "said first side end flap" and "said second side end flap" are each unclear insofar as part (a) of the claim defines a plurality of first side end flaps and a plurality of second side end flaps, i.e. which of the plurality is being referred to? The remaining claims are replete with the same indefiniteness regarding the first and second side end flaps.

In claim 4, line 38 and 39, and claim 5, line 11 from the end, it is unclear what previously defined structure is being defined as "having a second insert aperture...".

In claim 14, lines 2 and 3, it is unclear how a single fold line is between the top panel and both the first top end flap and the second top end flap, i.e. it would appear that a fold line is between the top panel and each of the top end flaps as disclosed.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 4, 5, 7, 8, 12, 13-15, 36-39, 41, 42 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown et al (US 5,350,109) in view of Wilson (US 5,072,876) and

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either Sutherland et al (US 6,112,977) or Skolik et al (US 6,170,741). Brown et al discloses all structure of the claimed carton except an insert or inserts having corresponding apertures matching the end apertures in the carton and, with respect to claims 14 and 15, formation of insert with fold lines formed with apertures. Wilson teaches that it is known to reinforce end handle apertures in a carton using an underlying panel insert (36, 58) and, with respect to claims 14 and 15, to form the foldlines in the insert using perforations. Each of Sutherland et al and Skolik et al teaches that it is known to form an insert as a separate element secured to the carton. It would have been obvious to reinforce the end wall handle apertures in Brown et al with an insert or inserts as taught by Wilson and to form the insert or inserts as a separate element(s) as taught by either Sutherland et al or Skolik et al as a matter of combining the elements according to known methods to yield the predictable results. See KSR Int'l Co. v. Teleflex Inc., 127 S. Ct. 1727, 1742; 82 USPQ2d 1385, 1396 (2007). With respect to claims 14 and 15, it would further have been obvious to form the insert in modified Brown et al using perforated foldlines as is further taught by Wilson to allow less stress on the foldlines during folding of the two plies and easier folding of the insert.

4. Claims 36-39, 41 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown et al in view of Wilson and JP '243 (Japan 47-7243). Brown et al discloses all structure of the claimed carton except inserts having corresponding apertures matching the end apertures in the carton. Wilson teaches that it is known to reinforce end handle apertures in a carton using an underlying panel insert (36, 58). JP'243 teaches that it is known to form the reinforcement for end panel apertures using underlying separate inserts for each handle aperture. It would have been obvious to reinforce the end wall handle apertures in Brown et al with an insert as taught by

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Wilson and to form the insert as a plurality of separate inserts as taught by JP '243 as a matter of combining the elements according to known methods to yield the predictable results. See KSR Int'l Co. v. Teleflex Inc., 127 S. Ct. 1727, 1742; 82 USPQ2d 1385, 1396 (2007).

5. Claims 9 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claims 8 and 15, respectively above, and further in view of Sherman et al (US 3,116,229). Modified Brown et al fails to evidence tear lines in the top and side panels form a dispenser flap. Sherman et al teaches that it is known to make a carton with a perforated tear out area to facilitate easier opening of the top and dispensing of the contents. It would have been obvious to make the top of the carton in modified Brown et al with a tear out area as taught by Sherman et al to facilitate easier access to the contents.

6. Claim 43 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 42 in either paragraph 3 or 4 above, and further in view of Sherman et al (US 3,116,229). Modified Brown et al fails to evidence tear lines in the top and side panels form a dispenser flap. Sherman et al teaches that it is known to make a carton with a perforated tear out area to facilitate easier opening of the top and dispensing of the contents. It would have been obvious to make the top of the carton in modified Brown et al with a tear out area as taught by Sherman et al to facilitate easier access to the contents.

7. Claims 10, 11 and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claims 9 and 16 above, and further in view of Gilchrist (US 3,533,549). Modified Brown et al fails to evidence formation of the perforated area with two sections. Gilchrist teaches that it is known to make a perforated tear out area in two sections with a finger engagement area therebetween. It would have been obvious to form the perforated tear out area

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in modified Brown et al in two sections as taught by Gilchrist to allow selective access to one side or to the entire top of the carton.

8. Claims 44 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 43 above, and further in view of Gilchrist (US 3,533,549). Modified Brown et al fails to evidence formation of the perforated area with two sections. Gilchrist teaches that it is known to make a perforated tear out area in two sections with a finger engagement area therebetween. It would have been obvious to form the perforated tear out area in modified Brown et al in two sections as taught by Gilchrist to allow selective access to one side or to the entire top of the carton.

Response to Arguments

9. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection. The withdrawal of the indication of allowability in light of the prior art as applied above is regretted.

Conclusion

Any inquiry related this office action or any other office action for this application should be directed to Examiner Gary Elkins at the number listed below. Normal work days are Mon-Thur. each week.

If the Examiner is unavailable and you need to talk to someone sooner, the Examiner's supervisor, Mr. Nathan Newhouse may be contacted at the number listed below.

Any inquiry of a general nature or relating to the status of an application should be directed to the 3700 Technology Center Receptionist. Information regarding the status of an application may also be obtained by accessing the PAIR system. Information about the PAIR system can be obtained at the website <http://pair-direct.uspto.gov> or by contacting the EBC at (866) 217-9197 (toll free).

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/Gary E. Elkins/

Primary Examiner, Art Unit 3782

(571)272-4537

Additional Phone Numbers:

Supervisor Nathan Newhouse: (571) 272-4544

Official Fax: (571) 272-8300